

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Closed Captioning and Video Description of)
Video Programming) MM Docket No. 95-176
)
Implementation of Section 305 of the Telecom-)
munications Act of 1996)
)
Video Programming Accessibility)

To: The Commission

REPLY COMMENTS OF BELL SOUTH

BellSouth Corporation and its subsidiaries BellSouth Interactive Media Services, Inc. and BellSouth Wireless Cable, Inc. (collectively "BellSouth"), by their attorneys, hereby reply to those comments submitted in response to the Commission's *Further Notice of Proposed Rulemaking* ("Further Notice"), MM Docket No. 95-176, FCC 98-3 (released January 14, 1998), *summarized*, 63 Fed. Reg. 3070 (January 21, 1998), proposing rules for closed captioning of emergency information.

The comments generally reflect a division between broadcasters, who bear the primary responsibility for transmitting emergency information, and the hearing-impaired community, which has expressed a legitimate need to have program suppliers caption as much emergency information as possible in the near term.¹ In particular, while broadcasters recognize the importance of access to accurate and timely emergency information, they are also concerned that the excessive costs of

¹ See, e.g., Comments of Thomas Mayes at 1; Minnesota Commission Serving Deaf and Hard of Hearing People ("MCDHH") at 2; Lee Nettles at 2; National Association for the Deaf at 3-5; Ohio School for the Deaf Alumni Association ("OSDAA") at 1; Avra Priola at 1; Self Help for Hard of Hearing People at 1-2.

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real-time captioning could lead to a reduction in the availability of emergency information or, in extreme cases, bankruptcy for smaller stations.² In a similar vein, at least one captioning company has noted that methods suggested by some commenters to keep captioning costs down — including remote captioning or the use of captioners on an “as needed basis” — were either highly impractical or replete with deficiencies.³

BellSouth believes the Commission can and should resolve this debate by returning to Section 713 of the Communications Act,⁴ which the Commission has recognized “appl[ies] to all types of video programming delivered electronically to consumers,”⁵ including emergency information. Specifically, Section 713 requires the Commission to prescribe rules to increase the amount of video programming made accessible to persons with hearing disabilities, *while at the same time* taking into account the realities of the video programming marketplace, the financial resources of video programming providers, and the current limitations on the supply of captioners.⁶ The legislative history of Section 713 specifically directs the Commission to “balance the need for

² See, e.g., Comments of ABC, Inc. (“ABC”) at 2-4; California Broadcasters Association at 3-4; CBS Corporation (“CBS”) at 1-2, 3-6; Cedar Rapids Television Company at 1-2, 4-5; COSMOS Broadcasting Corporation (“COSMOS”) at 1-4; National Association of Broadcasters (“NAB”) at 4-5; National Cable Television Association (“NCTA”) at 3-5; Paxson Communications Corporation (“Paxson”) at 1-3; Radio-Television News Directors Association (“RTNDA”) at 3-6; The Weather Channel at 9.

³ See Media Captioning Services Comments at 3.

⁴ 47 U.S.C. § 613. Section 713 (“Video Programming Accessibility”) was added to the Communications Act by Section 305 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁵ *Closed Captioning and Video Description of Video Programming, Video Programming Accessibility*, MM Docket No. 95-176, *Report and Order*, FCC 97-279 at ¶ 6 (released Aug. 22, 1997) (“*Closed Captioning Order*”).

⁶ See 47 U.S.C. § 613.

closed captioned programming against the potential for hindering the production and distribution of programming.”⁷

In light of the foregoing, BellSouth agrees with RTNDA that:

In crafting its rules, the Commission should keep clearly in mind that, in enacting Section 713, Congress indicated that it did not view the objective of maximizing the accessibility of programming through captioning as an end to be achieved at any cost. Rather, the language of the statute made plain Congress’s intention that *the FCC’s rules should afford due consideration to the economic and other burdens that may attend alternative captioning methodologies as they are applied to various video programming providers.*⁸

Accordingly, any rules adopted by the Commission as a result of this proceeding must balance the benefits of captioning against the economic burdens associated therewith. To do otherwise and ignore the financial, technical, and logistical burdens of real-time captioning of emergency information will leave the Commission faced with an avalanche of requests for “economic burden” waivers pursuant to Section 713(d), a result which will only drain the Commission’s resources without increasing the availability of emergency information to hearing-impaired viewers.⁹

Further, BellSouth reiterates that the Commission has already determined that blanket exemptions for the instructional fixed television service (“ITFS”) and certain smaller programmers

⁷ H. R. Conf. Rep. No. 104-458, at 183 (1996) (“Joint Explanatory Statement”). The Commission has also recognized this point. *See Closed Captioning Order* at ¶ 1 (“In crafting rules to implement Section 713, we have endeavored to ensure that persons with hearing disabilities have access to video programming while at the same time taking into consideration the effect of our rules on the video programming industry.”); *id.* at ¶ 11 (stating that the Commission must “balance the important need for closed captioned video programming against . . . market conditions”).

⁸ RTNDA Comments at 5 (emphasis added).

⁹ *See* 47 U.S.C. § 613(d). Under this subsection, providers of video programming may petition the Commission for an exemption where application of the captioning requirements would result in an “undue economic burden,” defined as “significant difficulty or expense.” *Id.* The factors to be considered in determining what constitutes an “undue economic burden” include: (1) the nature and cost of closed captioning; (2) the impact on the operation of the provider/program owner; (3) the financial resources of the provider/program owner; and (4) the type of operations of the provider/program owner. *Id.*

are necessary to achieve the objectives of the statute. The Commission concluded that without an ITFS exemption or income-based exemption for smaller video programming providers, certain programming might become too costly to produce.¹⁰ In the case of real-time captioning of emergency programming, the economic burden on these entities will be even more substantial. Moreover, ITFS providers may not have the resources to even provide captioned emergency information.¹¹ This is not surprising, since, as many commenters note, the viewing public relies primarily upon local broadcast stations, not ITFS licensees, for up-to-date emergency information.¹²

In addition, although members of the hearing-impaired community seek a word-by-word translation requirement for emergency information,¹³ the statute does not require this. Again, Section 713 requires a balancing of interests. Accordingly, the Commission should carefully consider other methods in the record which convey essential emergency information to the hearing-impaired community at a lower cost and with a lower risk of error.¹⁴ For example, the California Broadcasters Association discusses use of the Emergency Digital Information Service (“EDIS”), which allows broadcasters to provide up-to-the minute open-captioned safety information without the costs of real-time closed captioning.¹⁵ In addition, the Cedar Rapids Television Company references the benefits associated with the “First Alert” system of maps and video crawls for

¹⁰ See *Closed Captioning Order* at ¶¶ 159-68.

¹¹ See, e.g., Wireless Cable Association (“WCA”) Comments at 8.

¹² See Comments of NAB at 2 (“In times of natural disaster or other emergencies, Americans primarily rely on over-the-air broadcasters for the information they need.”); WCA at 3 (“Live news and emergency reports are generally produced by local broadcast television news organizations.”); The Weather Channel at 6 (“Local broadcasters are the primary conduits through which their communities receive . . . critical health and safety information.”).

¹³ See, e.g., Comments of National Association of the Deaf at 4 (stating that the captioning of emergency messages “must be verbatim”); Telecommunications for the Deaf at 2 (calling for “verbatim captioning” for emergency information).

¹⁴ See *Further Notice* at ¶ 8; BellSouth Comments at 1-2.

¹⁵ See California Broadcasters Association Comments at 2-3.

weather-related emergencies.¹⁶ Other broadcasters also demonstrate that the Commission's existing Emergency Alert System ("EAS") and broadcast rules already ensure the visual transmission of emergency information.¹⁷

Finally, BellSouth notes that there is substantial support among multichannel video programming distributors ("MVPDs") for rules that do not impose emergency captioning requirements directly on MVPDs.¹⁸ BellSouth agrees with DIRECTV that "[w]ith respect to MVPDs . . . whose primary focus is nationwide programming distribution, the Commission's emergency captioning inquiry for the most part is and should be *inapplicable* because such operators simply do not carry programming that features local emergency information."¹⁹ As BellSouth noted in its comments, ensuring accuracy of "real-time" dialogue transcription and precise placement of emergency captions can be adequately accomplished only if captioning is done by the entity that is most familiar with program content, *i.e.*, the program source, rather than by an MVPD at the end of the distribution chain.²⁰ Like DIRECTV, however, BellSouth reiterates its intent to retransmit intact all captioned emergency information that it receives from any program source.²¹

¹⁶ See Cedar Rapids Telephone Company Comments at 2-3.

¹⁷ See Comments of ABC at 3-4; CBS at 7-8; COSMOS at 4-6; NAB at 2-3; Paxson at 3-5; RTNDA at 6-8.

¹⁸ See, *e.g.*, Comments of DIRECTV, Inc. ("DIRECTV") at 2-4; WCA at 3-6; *see also* BellSouth Comments at 1-4.

¹⁹ DIRECTV Comments at 4.

²⁰ See BellSouth Comments at 2. Congress has also recognized that "[i]t is clearly more efficient and economical to caption programming *at the time of production* and to distribute it with captions than to have each delivery system or local broadcaster caption the program." H.R. Rep. No. 104-204, at 114 (1995) ("House Report") (emphasis added).

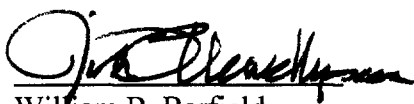
²¹ See DIRECTV Comments at 4.

CONCLUSION

For the foregoing reasons, BellSouth respectfully requests that the Commission adopt rules in this proceeding consistent with the proposals expressed herein and in BellSouth's initial comments.


Respectfully submitted,

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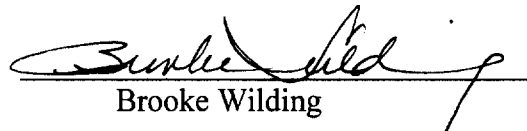
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